

STATE OF MICHIGAN
COURT OF APPEALS

GUS GHANAM,

Plaintiff-Appellee,

v

JOHN DOES,

Defendants,

and

JOSEPH MUNEM,

Appellant.

FOR PUBLICATION

January 2, 2014

No. 312201

Macomb Circuit Court

LC No. 2012-001739-CZ

Advance Sheets Version

Before: TALBOT, P.J., and WILDER and STEPHENS, JJ.

STEPHENS, J. (*concurring*).

I concur with my colleagues that this matter should be reversed and remanded to the trial court for entry of judgment in favor of defendants. I write separately to address with specificity my belief that Michigan should adopt the analysis of the Delaware Supreme Court in *Doe v Cahill*, 884 A2d 451, 457, 462-464 (Del, 2005), in which that court noted that while a plaintiff who is a public figure needs to prove actual malice to prevail on a claim of defamation, proving malice when the identity of the defendant is unknown is unduly burdensome. Thus, the plaintiff need not plead facts in support of the element of actual malice in order to ascertain the identity of the person or persons who authored the defamatory statements.

The reasoning of the *Cahill* court is compelling that

under the summary judgment standard, scrutiny is likely to reveal a silly or trivial claim, but a plaintiff with a legitimate claim should be able to obtain the identity of an anonymous defendant and proceed with his lawsuit. . . . [T]rial judges will then still provide a potentially wronged plaintiff with an adequate means of protecting his reputation thereby assuring that our courts remain open to afford redress of injury to reputation caused by the person responsible for abuse of the right to free speech. [*Id.* at 464.]

I understand that there is a significant split of opinion among other jurisdictions on this issue. As the majority has noted, many jurisdictions have followed some blend of *Dendrite Int'l, Inc v Doe No 3*, 342 NJ Super 134; 775 A2d 756 (NJ App, 2001), and *Cahill* with some taking the *Dendrite* approach on actual malice and others adopting the *Cahill* standard. I urge that Michigan follow the analysis and reasoning in *Cahill* given the extreme difficulty of proving the malice of those cloaked in anonymity.

/s/ Cynthia Diane Stephens